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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 190923-0034]

RIN 0648-BI95

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Red Grouper Management
Measures**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in a framework action to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule reduces the red grouper commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs). The purpose of this rule is to continue the Gulf red grouper commercial and recreational ACL and ACT reductions implemented through emergency rulemaking in 2019 to protect the red grouper stock.

DATES: This final rule is effective *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/framework-action-modification-gulf-mexico-red-grouper-annual-catch-limits-and-annual-catch>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: peter.hood@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The FMP, which includes red grouper, was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On July 19, 2019, NMFS published a proposed rule for the framework action and requested public comment (84 FR 34845). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the

management measures described in the framework action and implemented by this final rule is described below.

Unless otherwise noted, all weights described in this rule are in gutted weight.

Background

For 2018, the red grouper commercial ACL was 8,190,000 lb (3,714,922 kg) and the commercial ACT (commercial quota) was 7,780,000 lb (3,528,949 kg); while the red grouper recreational ACL was 2,580,000 lb (1,170,268 kg) and the recreational ACT was 2,370,000 lb (1,075,014 kg).

At the October 2018 meeting, the Council received a recommendation from its Scientific and Statistical Committee (SSC) to reduce the red grouper commercial and recreational ACLs and ACTs, effective for the 2019 fishing year. Since 2014, combined commercial and recreational Gulf red grouper landings have trended downwards from over 7.26 million lb (3.29 million kg) in 2014 to approximately 4.16 million lb (1.89 million kg) in 2017. The most recent red grouper stock assessment (Southeast Data, Assessment, and Review (SEDAR) 61), was not scheduled for completion until later in 2019. Therefore, the NMFS Southeast Fisheries Science Center (SEFSC) conducted an interim red grouper stock analysis to assist the SSC in developing harvest

advice for the 2019 fishing year. This analysis suggested that the stock may be declining and supported recommending that the Council reduce the 2019 Gulf red grouper total ACL to 4.60 million lb (2.09 million kg).

In addition to the SSC's advice based on the interim analysis, the Council heard public testimony at the October 2018 meeting primarily from commercial fishermen. These fishermen expressed concern about the status of the red grouper stock, noting that red grouper are harder to catch than in previous years and that there appears to be a scarcity of legal-size and larger fish throughout the species' range on the west Florida shelf. The Council also discussed the severe red tide conditions that occurred off the Florida west coast in the summer and fall of 2018, which may have adversely affected the red grouper stock. Based on these recommendations, the Council requested that NMFS implement an emergency or interim rule to reduce the Gulf red grouper stock ACL for the 2019 fishing year to 4.60 million lb (2.09 million kg), or equal to the 2017 total red grouper landings level, whichever is less. The Council also began work on this red grouper framework action to reduce the red grouper catch limits beyond 2019.

The 2017 combined red grouper commercial and recreational

landings (approximately 4.16 million lb (1.89 million kg)) were less than the SSC recommended combined ACL of 4.60 million lb (2.09 million kg). Therefore, NMFS implemented an emergency rule (84 FR 22389, May 17, 2019) to reduce the red grouper commercial and recreational ACLs and ACTs consistent with a stock ACL of 4.16 million lb (1.89 million kg). The emergency rule is effective through November 13, 2019, and may be extended for a maximum of an additional 186 days.

Management Measures Contained in this Final Rule

This final rule continues the red grouper ACLs and ACTs implemented by the emergency rule for the 2019 fishing year. Based on the framework action, the stock ACL is 4.16 million lb (1.89 million kg), which is equal to the 2017 combined red grouper commercial and recreational landings. Applying the commercial allocation of 76 percent results in a commercial ACL of 3.16 million lb (1.43 million kg). The commercial ACT is set at 95 percent of the commercial ACL, or 3.00 million lb (1.36 million kg).

For the recreational sector, 24 percent of the 4.16 million lb (1.89 million kg) total stock ACL results in a recreational ACL of 1.00 million lb (0.45 million kg). The recreational ACT is set at 92 percent of the recreational ACL, or 0.92 million lb

(0.42 million kg).

The ACLs and ACTs implemented through the emergency action and continued through the promulgation of this rule are expected to benefit the stock. As described in the framework action, indicators suggest the stock may be in decline and that harvest levels need to be lowered. The stock has been assessed through SEDAR 61 and the Council's SSC is expected to make a new catch level recommendation in September 2019. The Council expects the reductions in ACLs and ACTs implemented by this final rule to lessen the impact of any possible future changes in the ACLs and ACTs in response to the information and catch level recommendation derived from SEDAR 61.

Comments and Responses

NMFS received 15 comments on the proposed rule for the framework action. The majority of the comments supported the proposed rule and the framework action. Some comments supporting the action suggested that additional management measures are necessary to protect the stock, such as prohibiting commercial and recreational fishing during the spawning season, reducing the recreational bag limit and season length, and increasing the commercial size limit.

Comments specific to the framework action and the proposed

rule are grouped as appropriate and summarized below, each followed by NMFS' respective response.

Comment 1: Because of the uncertainty in recreational landings estimates, additional measures such as a lower bag limit and longer seasonal closure should be implemented for the recreational sector to protect the stock.

Response: NMFS acknowledges that uncertainty exists in estimating recreational landings. However, NMFS does not agree that additional recreational management measures are needed at this time to protect the red grouper stock. The catch levels established through this final rule are equal to 2017 harvest levels. In addition, preliminary data show that 867,118 lb (393,318 kg), gutted weight, were landed in 2018. This is below the 1.00 million lb (0.45 million kg) ACL and 0.92 million lb (0.42 million kg) ACT implemented through this final rule. Thus, NMFS expects the 2019 recreational season to remain open all year under the current 2-fish red grouper recreational bag limit. However, should landings reach or be projected to reach the recreational ACL, NMFS is required to close the recreational sector for the remainder of the fishing year.

NMFS estimates Gulf red grouper and other reef fish recreational landings from information collected through the

Marine Recreational Information Program (MRIP), Southeast Headboat Survey (SHS), Louisiana Department of Wildlife and Fisheries creel survey, and the Texas Parks and Wildlife Department creel survey. Before these data are used to monitor landings, NMFS checks for errors and generates any necessary weight estimates. With respect to private angler landings, NMFS has improved MRIP to reduce bias identified by the National Academies of Sciences by modifying both the angler intercept survey, which collects information at the dock, and the household survey, which collects information by contacting anglers at home. With respect to the for-hire component, NMFS is working to implement an electronic data reporting system that will require all federally permitted headboats and charter vessels to report landings after every trip. Currently, headboats report weekly and MRIP collects information from charter vessels randomly through a survey that is used to produce bi-monthly catch estimates. Thus, NMFS expects the accuracy of recreational landings estimate to continue to improve.

Comment 2: Both the commercial and recreational sectors should be closed to red grouper fishing during the spawning season.

Response: For this framework action, the Council only considered reducing the red grouper ACLs and ACTs. However, current regulations do protect the stock during some of the spawning season.

Based on information from the SEDAR 42 red grouper stock assessment, the majority of spawning occurs between March and June and in waters deeper than 20 fathoms. For the recreational sector, there is a February 1 through March 31 shallow-water grouper closed season seaward of a line approximating the 20 fathom contour in the eastern Gulf. Although this closure was implemented to protect gag spawning aggregations, the closed season protects other grouper species that spawn offshore during those months, including red grouper. In addition, there are areas closed to reef fish fishing in the Gulf that are in effect year-round (e.g., Madison-Swanson and Steamboat Lumps) or seasonally (e.g., The Edges; closed from January through April).

For the commercial sector, the individual fishing quota (IFQ) program does allow red grouper fishing year-round, but the area closures referred to previously apply. In addition, from June through August, bottom longline gear is not allowed shoreward of a line approximating the 50 fathom contour. Because the majority of landed red grouper are caught with bottom

longline gear in waters shallower than 50 fathoms, this seasonal prohibition affords some protection to the spawning stock.

NMFS expects a new stock assessment (SEDAR 61) for red grouper to be complete in the fall of 2019. Based on the assessment results, the Council may take further action to protect the red grouper stock, which could include revisions to seasonal closures.

Comment 3: To increase protection to the red grouper stock, the commercial minimum size limit should be increased from 18 inches (45.7 cm) to 20 inches (50.8 cm) total length (TL), consistent with the current recreational minimum size limit.

Response: NMFS disagrees. The commercial minimum size limit was reduced from 20 inches (50.8 cm) TL through the final rule implementing Amendment 30B to the FMP in 2009 (74 FR 17603; April 16, 2009). The Council and NMFS made this change to reduce discard mortality in the commercial fishing sector. Size limit analyses showed that reducing the size limit, especially in the commercial longline component of the fishery, was expected to decrease the number of discarded fish and increase the yield-per-recruit, which benefits the stock.

Comment 4: Reducing the red grouper commercial quota has driven-up lease prices for allocation and harmed small IFQ

fishing operations.

Response: NMFS recognizes that the price of allocation has likely increased as a result of the decrease in the commercial quota implemented through the emergency rule, and that allocation prices will likely continue to be higher as a result of this final rule. However, as explained previously, the purpose of this framework action is to protect the red grouper stock, which has shown signs of decline. Further, as explained in the framework action, NMFS expects the impact to those fishermen who lease allocation to be lessened by a foreseeable increase in the ex-vessel prices for red grouper.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

NMFS published the proposed rule for the framework action and prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany the proposed action. The IRFA concluded that the action would have a significant adverse impact on the average annual 330 small commercial fishing businesses and their combined 376 federally permitted fishing vessels that harvest red grouper from the Gulf.

A final regulatory flexibility analysis (FRFA) parallels the IRFA and must also include a summary of significant issues raised by public comments in response to the IRFA, any changes in the action in response to those comments or new information, a description of the steps the agency took to minimize the adverse economic impact on small entities, and why it selected the alternative adopted.

The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule. No public comments were received on the IRFA or the economic

impacts of the rule more generally. NMFS has not received any new information that would affect its previous determination. As a result, the estimates and conclusions of the IRFA have not changed, and the IRFA is incorporated by reference.

An emergency rule reduced the red grouper commercial quota for 2019 to 3.00 million lb (1.36 million kg). This final rule will maintain that reduction of the red grouper quota for 2020 and beyond, unless modified by the Council. The Council considered two other alternatives to the commercial quota revision: either no change or a reduction to 3.32 million lb (1.51 million kg). The no-action alternative has no short-term impacts on small businesses, but was not selected by the Council because it allows for declining status of the stock. The second non-selected alternative has smaller short-term costs than the selected alternative, but it may not provide for sufficient protection of the stock.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the

rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf, Recreational, Red grouper.

Dated: September 24, 2019.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Amend § 622.39 by:

a. Lifting the suspension on paragraph (a)(1)(iii)(C);

b. Revising paragraph (a) (1) (iii) (C); and

c. Removing paragraph (a) (1) (iii) (D).

The revision reads as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) *Red grouper*—3.00 million lb (1.36 million kg).

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3. Amend § 622.41 by:

a. Lifting the suspension on paragraph (e);

b. Revising paragraph (e); and

c. Removing paragraph (r).

The revision reads as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) *Red grouper*—(1) *Commercial sector*. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial red grouper. The commercial ACT for red grouper is equal to the applicable quota

specified in § 622.39(a)(1)(iii)(C). The applicable commercial ACL for red grouper, in gutted weight, is 3.16 million lb (1.43 million kg).

(2) *Recreational sector.* (i) Without regard to overfished status, if red grouper recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACL specified in paragraph (e)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of red grouper in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) Without regard to overfished status, and in addition to the measures specified in paragraph (e)(2)(i) of this section, if red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (e)(2)(iv) of this section, the AA will file a notification with the Office of the Federal Register to maintain the red grouper

ACT, specified in paragraph (e) (2) (iv) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary. In addition, the notification will reduce the length of the recreational red grouper fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational ACT in the following fishing year.

(iii) If red grouper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, and red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (e) (2) (iv) of this section, the following measures will apply. In addition to the measures specified in paragraphs (e) (2) (i) and (ii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the ACL overage in the prior fishing year, and reduce the ACT, as determined in paragraph (e) (2) (ii) of this section, by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iv) The recreational ACL for red grouper, in gutted weight, is 1.00 million lb (0.45 million kg). The recreational ACT for red grouper, in gutted weight, is 0.92 million lb (0.42 million kg).

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